

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. Serial No.: 09/914,176

Attorney Docket No.: 78104.028

Filing Date: 24 August 2001

Applicant(s): FRENCH et al.

Title: **IDENTIFICATION OF BACTERIA BY AMPLIFICATION AND PROBING****RESPONSE TO DECISION DATED 12 JANUARY 2004**

Box: PCT Legal Office
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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22 JAN 2004
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International Division

To the Commissioner:

Further to Applicants' Petition filed 03 December 2002, Applicants' Supplemental Petition dated October 6, 2003, and the Office's dismissal thereof in a Decision dated 12 January 2004, Applicants request reconsideration of the Decision in view of the following Second Supplemental statement.

SUPPLEMENTAL FACTS IN SUPPORT OF PETITION

I, Joseph T. Leone, the undersigned counsel for Applicants, have personal knowledge of the facts of this case. I am responsible for prosecuting this application before the U.S. Patent and Trademark Office. Pursuant to 37 CFR §1.8(b), I hereby declare and state as follows:

I received in my office a Notice of Missing Requirements sometime in late October of 2001. The Notice of Missing Requirements was dated October 22, 2001. The Notice indicated that Applicants needed to file a signed inventors' declaration and to supply a Sequence Listing in both paper and computer-readable format. The Notice set a two-month period for response. Thus, a response to the Notice was due on or before December 22, 2001.

On November 13, 2001, I personally prepared and filed a complete response to the Notice with the Office. I signed the response, and my secretary, Marcia Layton, signed the certificate of mailing in my presence. I personally placed the response in an envelope, attached the required postage, and personally deposited the envelope, along with two others, in the official U.S. Post Box that is located outside my office, on the evening of November 13, 2001. I hereby declare, based on my own personal knowledge, that the posted pick up time on that Post Box where I deposited the envelope is 6:00 pm. I further declare, based on my own personal knowledge, that the Post Box where I deposited the envelope is located on the west side of Excelsior Drive, immediately north of the intersection of Old Sauk Road and Excelsior Drive, Madison, WI 53717.

I have no recollection whether I deposited the envelopes before or after 6:00 pm. In any event, however, I personally deposited the envelope in question, along with two others, into the mail box described in the preceding paragraph on the evening of November 13, 2001.

As further evidence for consideration by the Office, I attach hereto and incorporate herein the "Return Post Card log" that is kept by the office of DeWitt Ross & Stevens. The log records each piece of mail that is sent to the PTO, along with the docket no., the client, an explanation of what was included in the envelope, the attorney responsible for the given piece of mail, and the number of the postcard. The right-hand column also includes manual check marks indicating those return-receipt postcards that have been received in our office. The piece of mail relevant to the present petition is highlighted in yellow. Note that there is no check mark in the far right-hand column, indicating that my office has not received the return-receipt postcard as of the date of this second supplemental response.

A true and complete copy of Applicants' response filed November 13, 2001 was previously submitted to the Office (as Exhibit A of Applicants' original Petition). I hereby confirm, by my own personal knowledge, that Exhibit A attached to Applicants' original Petition is a true and complete copy of the response to the Notice of Missing Requirements that I filed on November 13, 2001.

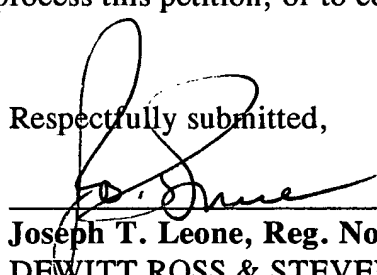
The above facts are relayed pursuant to my personal, first-hand knowledge of the course of events in this matter.

I, Joseph T. Leone, Registration No. 37,170, hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which the attached documents are directed.

Applicants therefore respectfully renew their earlier petition, and request that the Notification of Abandonment dated November 21, 2002 be withdrawn, that the documents submitted in their Petition dated 3 December 2002 be entered into the application, and that the application be placed in line for examination on the merits. Early notification of such action is earnestly solicited.

The Commissioner is hereby authorized to charge any additional fees required to process this petition, or to comply with the Notice, to Deposit Account No. 18-2055.

Respectfully submitted,


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I hereby certify that this correspondence is being deposited by fax with U.S. Postal Service to:

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Date of Deposit: 1-16-04

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